

REPORT

OF THE COMMITTEE TO WHOM WERE REFERRED
THE PETITIONS OF CITIZENS OF THE

Commonwealth of Pennsylvania,

PRAYING FOR THE PASSAGE OF A LAW AUTHORISING THE

CALL OF A CONVENTION

TO ALTER THE

CONSTITUTION.

Mr. Sullivan, *Chairman.*

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READ IN THE SENATE, FEBRUARY 20, 1833.
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REPORT, &c.

THE Select Committee, to whom were referred numerous petitions from different parts of the state, praying for legislative enactment preliminary to the call of a convention to alter the constitution, REPORT:

That they have approached the duty assigned them, with the caution and deliberation which its importance seemed to demand; and that the result was, a decision that the bill appended to this report, should be submitted to the Senate for their consideration, accompanied by some remarks on the different propositions.

Before entering upon enquiries relative to the propositions in the bill, it may be proper to enquire into the propriety of originating the measure in the manner proposed. The bill of rights declares, that "the people have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper." The correctness of this principle, it is believed, is not now, and never has been, denied by the people of Pennsylvania.

The question then arises, in what manner may the incipient step towards alteration or reform originate? The answer, according to the principle above recognised, is, that it ought to originate with the people. Some, whose opinions are entitled to respect, maintain that such preliminary action can alone be legitimate, in primary assemblies of the people. If this rule be applied in its most comprehensive sense, then it would seem that nothing short of a spontaneous, universal, and simultaneous rising of the people, in favour of a reform in their frame of government, could be exerted to produce any change, whether trivial or important. Such an occurrence could scarcely be expected, except in cases of intolerable hardship, under an existing constitution. But if the principle above noticed be taken in a reasonable and qualified sense, positive action of the Legislature would not, it is conceived, transcend its authority.

But we have the precedent of the act of the 28th of March, 1825, "For ascertaining the opinion of the people of the commonwealth, relative to the call of a convention." And if we may judge from the protest of the members of the Legislature who voted against that act, there were, at that time, no petitions from the people on the subject; yet, in that instance, did the people of the state recognise the act of the Legislature in the largest popular assemblies, (at the general election.) by giving 104,285 votes on the subject.

The proposition which the committee are now considering, presents itself with much greater force than that which attended the

passage of the act just now referred to. In the present case, numerous petitions have been presented during the present session, and from almost every county in the state, and the committee are not aware of any remonstrance against the proposed measure. The very fact of the people petitioning, goes to accord to the Legislature the authority to propose to them means by which the opinion of the majority may be ascertained, and it is humbly believed, that nothing in the plan proposed can possibly have a tendency, in the least degree, to compromit them; they have left to their free choice to approve or disapprove of the measure.

In the case of the former vote on the call of a convention, from, perhaps, a praiseworthy jealousy and apprehension of danger in throwing open the whole constitution, (many parts of which are excellent,) into the power of a convention, no doubt many who voted against it were influenced by that fear. The bill proposed points out the extent, beyond which the convention cannot pass; this is a good security: the terms of the bill will be the terms on which each citizen will give his vote *for* or *against* a convention.

A few remarks will now be made on each of the propositions contained in the bill.

1. *The General Assembly to meet in January in every year, unless sooner convened by the Governor.*—This change of the time of meeting, will obviate the custom of the temporary holiday adjournments. These adjournments, long sanctioned by custom, take place, under the present regulation, at a period when the Legislature has but just got into a train of despatch of their business. The ordinary nominal time lost, is about fifteen days; but the real loss of time, from several causes, may be estimated at one month. This is a clear loss to the state, to the amount of the daily pay and salaries of the members and officers of the Legislature during that period, besides a large amount of contingent expenses, accruing in the same manner as though there had not been an adjournment.

2. *Judges to be appointed by the Governor, for a term of years.* This may be considered as a medium between election for a term of years and the present tenure of the office of judge, which, in reality, amounts to holding the office for life; because it is evident, from what has transpired within the last ten years, that it is next to an impossibility to remove a judge by impeachment, or address to the Governor. The facts of misdemeanor in office, partiality, neglect of duty, bodily or mental infirmity, or even immoral deportment, are not easily substantiated in so clear a light, as to induce two-thirds of both branches of the Legislature to vote an address, or to pronounce guilty on articles of impeachment. Indeed, from past occurrences, it would seem that, unless in a time of extreme political excitement, judges may bid defiance to addresses and impeachments, the result of which would be acquittal, and an enormous amount of costs for the attendance of witnesses and fees of counsel, all paid out of the treasury of the state.

It is thought that the tenure of a judgeship, for a term of years not unreasonably short or long, would on the one hand, preserve, as far as necessary, the independence of the judge, and on the other, prevent many of the evils now complained of, and which, for many years, have caused much dissatisfaction among the people in some parts of the state.

A good judge would scarcely fail of a re-appointment, if he should desire it, and one so far advanced in age as to be unable to perform the duties, could not reasonably ask it: Indeed, it would be more conducive to the public interest, to allow such an one a gratuitous salary, than to have the ends of justice frustrated, by having only a nominal judge in a county or district.

3. *Prothonotaries, Clerks of the Courts, Registers and Recorders to be elected for a term of years.* These being officers of the court, there does not seem to be any good reason why they should not be elected by the people, as well as the sheriffs. This change would relieve the Governor from a great portion of his embarrassing patronage, and would certainly be more republican than the present mode of appointment.

4. *Justices of the Peace and Aldermen to be elected by wards, districts or townships, for a term of years.* The remarks on the proposition relative to judges, will, in some measure, apply to this. By this regulation, the number would be graduated to the proper needs and convenience of the different districts. At present, each new Governor is pressed to make a large number of appointments, far exceeding the "competent number" intended by the constitution: he is often imposed upon, both with regard to the necessity of the case, and the character and qualifications of the applicants. This would also relieve him from a patronage more perplexing than that which is connected with the county appointments, and it is believed would not prejudice the administration of justice. It is always to be borne in mind, that the present constitution having been formed forty years ago, the immense increase of population, the large number of counties organized, and the numerous offices created by law since its adoption, have very much augmented the number of executive appointments.

5. *Provision for a Common School Fund.* On this subject, there has been so much legislation, and so little that can be called substantial or permanent, that to guard a fund so sacred, it should not be left to the fluctuation and uncertainty of legislation, but be fixed by the constitution; and then the people would have such a guaranty for its permanency, that they would be the more likely to contribute cheerfully to its support.

6. *Provision against Lotteries.* The great evils connected with lotteries are so manifest, that no argument is necessary in favor of fixing an insurmountable barrier against their being authorised by the Legislature.

7. *The Senatorial term to be reduced to three years.* As the Senate consists of thirty-three members, the highest number allowed

by the constitution, this change would cause the term of *eleven* Senators to expire every year. At present, the expiring terms vary from *eight* to *nine*. The change proposed would produce uniformity, and it is thought the term would be sufficiently long for the necessary permanency of that body.

8. *A check by the Senate on all nominations for appointment by the Governor.* This is after the example of the constitution of the United States and some of the states of the Union, and is intended as a guard against improvident appointments.

9. *To provide for the election of a Lieutenant Governor.* This office is intended to provide against the contingency of the death, resignation, or disability of the Governor, and would be an office without salary, except in case of performing the duties of Governor.

10. *Provision for amendment of the Constitution.* There being no direct provision for amendment in the present constitution, this circumstance has given rise to the difficulties noticed in a former part of this report. It cannot be doubted, that such a judicious provision might be made, as would, in future, facilitate amendment or alteration, without endangering the cardinal principles of our frame of government. One or two of several ways may be mentioned.—Let an amendment be proposed by one Legislature, then let it be approved by a vote of the people, or by one, two, three, or more successive Legislatures, before it should become a part of the constitution. It is always to be kept in view, that the proposed bill imposes no obligation on future Legislatures, or on the people—both will be left free to act as their discretion may dictate, either with regard to the whole, or a part of the propositions.

The committee submit for the consideration of the Senate, the following bill:

An act for ascertaining the opinion of the people of this commonwealth, relative to the call of a Convention.

SECT. 2. *Be it enacted, &c.* That it shall be the duty of each of the inspectors of votes, for the several townships, wards and districts, in this commonwealth, at the next general election, to receive tickets from the citizens thereof, qualified to vote at such general elections, and to deposite them in a proper box or boxes to be for that purpose provided by the proper officers, which tickets shall be labelled with the word “convention,” and within the words “for a convention,” or “against a convention,” and folded, delivered and received, in the usual manner.

SECT. 2. *And be it further enacted, &c.* That the said election shall, in all respects, be conducted as the general elections in this commonwealth are now conducted; and it shall be the duty of the return judges of the respective counties thereof, first having ascertained the number of votes given for or against the calling of

a convention, to make out duplicate returns thereof, expressed in words at length, and not in figures only, one of which returns, so made out, shall be lodged in the prothonotary's office of the proper county, and the other sealed and directed to the Speaker of the Senate, which shall be by one of the said judges delivered to the sheriff, with the other returns required by law, to be transmitted to the Secretary of the Commonwealth, whose duty it shall be to transmit the same therewith; and the Speaker of the Senate shall open and publish the same, in the presence of the members of the two houses of the legislature, on the second Tuesday of December next.

SECT. 3. *And be it further enacted, &c.* That in contemplation of voting under the provisions and directions of this act, either for or against a convention, it is hereby declared and understood that such voting, or any consequent action relative to the call of a convention, or the election of delegates, or any alteration or amendment of the constitution, shall be confined and restricted to the whole or any part of the following propositions, that is to say:

First—The General Assembly to meet in January in every year, unless sooner convened by the Governor.

Second—Judges to be appointed by the Governor for a term of years.

Third—Prothonotaries, clerks of the courts, registers and recorders, to be elected for a term of years.

Fourth—Justices of the peace and aldermen to be elected by wards, districts or townships, for a term of years.

Fifth—Provision to be made for a common school fund.

Sixth—Provision against lotteries.

Seventh—The senatorial term to be reduced to three years.

Eighth—A check by the Senate on all appointments by the Governor.

Ninth—To provide for the election of a Lieutenant Governor.

Tenth—Provision for amendment of the constitution.

